IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 81 of 1977

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMBHAI RANCHHOD & COMPANY

Versus

CHHOTABHAI KHANDUBHAI

Appearance:
Ms.Shubhra Almoula for
MR VJ DESAI for appellant
Mr.Dakshesh Mehta for
MR DD VYAS for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. This is the Plaintiff's First Appeal against the judgment and decree dated 12.10.1976 passed by Civil Judge (S.D.), Navsari in Special Civil Suit No.33/75

whereby the Plaintiff's Suit was dismissed. The Plaintiff being a Firm registered under the Indian Partnership Act and engaged in the business of coconut, gur, foodgrains, etc. at village Sonwadi filed Special Civil Suit No.33/75 on 3.5.1975 for recovery of the sum of Rs.16,954-29 Ps. with costs of the Suit and running interest. According to Plaintiff, the Defendants being heirs of Khandubhai Dayabhai (now deceased) were and are living as the members of Joint Hindu Family; that the Defendants used to purchase the goods on credit from the Plaintiff's shop in the name of Khandubhai Dahyabhai and at times were also taking cash, the period of credit agreed to was 30 days and the agreement was that in case the Defendants fail to pay the money within the credit period, interest at the rate of 9% per annum was to be charged; the Defendants did not pay the amount despite repeated demands and it was pleaded that Defendants on Bhadarva Vad I of S.Y.2027 settled the Accounts and acknowledged the debt of Rs.11,987-47 Ps. that was found to be due against the Defendants to the Plaintiff. It was further pleaded that even after the settlement of the accounts, the Defendants used to purchase goods from the Plaintiff's shop and also used to make payment towards the same and so on the date of the Suit, according to the Plaintiff, in all Rs.12,245-87 Ps. were due from the Defendants towards the principal amount and it has been stated that on demand being made, the Defendants acknowledged the debt through a letter by one Shri Lalbhai N.Mehta. The amount due to the Plaintiff was not paid despite notice dated 10.3.1975 and hence the suit for the decretal amount of Rs.12,245-87 Ps. adding Rs.4,708-40 Ps. by way of interest to the principal amount was filed. The Defendants filed a joint written statement and resisted the suit. It was not disputed that the goods used to be purchased on credit from Plaintiff's Shop and it was admitted that Account was settled on Bhadarva Vad I of S.Y.2027. However, it was denied that on the Account being settled, Rs.11,985-47 Ps. were found due from the Defendants and that the same was acknowledged to be due from the Defendants. The Defendants specifically denied to have purchased any goods from the Plaintiff's shop after Bhadarva Vad I of S.Y.2027 and it was also denied that they had acknowledged the debt through letter by one Shri Lalbhai N.Mehta. The factum of the living as Joint Hindu Family members was also denied and the plea was also taken that the Suit was barred by limitation.

2. On the basis of the pleading of the parties, the trial court framed following issues:-

"(1) Whether the Plaintiff is a firm registered under the Indian Partnership Act?

(2) Whether the Plaintiff proves that all the Defendants were purchasing the goods,and taking hand loan from the Plaintiff as the members of the Joint Hindu Family?

(3) Whether the Plaintiff proves that deducting the payments made towards the Plaintiff's dues, Rs.16,954-29 Ps. are due from the Defendants to the Plaintiff?

(4) Whether the suit claim is within time?

(5) To what amount, if any, is the Plaintiff entitled and from whom?

(6) What order and decree?"

Issue No.1 was decided in favour of the Plaintiff and it was held that the Plaintiff was a Firm registered under the Indian Partnership Act. Issue No.2 was decided against the Plaintiff. With regard to Issue No.3 it was found that on Bhadarva Vad I of S.Y.2027 Rs.11,987-47 Ps. were due to the Plaintiff. Issue No.4 was decided against the Plaintiff and it was held that Suit claim was not within limitation. Issue No.5 was decided against the Plaintiff and on issue No.6 order and decree was passed accordingly.

3. For the purposes of decision of the present Appeal, it is not necessary to go into all the issues inasmuch as this Court finds that this Appeal can be decided only by examining the question as to whether the Plaintiff had failed to prove the transactions after Bhadarva Vad I of S.Y.2027 and in absence of any acknowledgement thereafter within the period of limitation, whether the trial court had rightly dismissed the Suit. So far as the question as to whether there was any transaction after Bhadarva Vad I of S.Y.2027 is concerned, the learned counsel for the Plaintiff has invited the attention of this Court to Paragraphs 29 and 30 of the impugned judgment to evidence the factum of the transaction after Bhadarva Vad I of S.Y.2027 i.e. the date on which the accounts were admittedly settled. Plaintiff's partner Naginbhai was examined, but he failed to give any details about the alleged transaction after Bhadarva Vad I of S.Y.2027. Son of Naginbhai, namely, Ishvarlal Naginbhai was also examined but he too was not able to establish these transactions. Learned counsel for the Plaintiff invited the attention of this Court to

Exhs.67 to 70 from the Khatavahi of S.Y.2028 to 2031 and the relevant entries from Udhaar Nondh. I have perused Exhs.67 to 70 and the relevant entries. Even if it is found that on the date when the accounts were settled Rs.11,987-47 Ps. were due against the Plaintiff and the accounts were settled, the factum of continuing transaction after Bhadarva Vad I of S.Y.2027 cannot be said to be established merely on the basis of Exhs.67 to 70 so as to be sufficient to fasten the liability against the Defendants.

4. Learned counsel for the Defendants has cited the case of Chandradhar Goswami v. Gauhati Bank Ltd., reported in AIR 1967 SC 1058. In this case, it has been categorically held by the Supreme Court that no person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge the same. In the facts of the present case, the Defendants have not admitted the correctness of these entries. Rather they have contested the same and have denied any such transaction.

5. The next decision on which reliance was placed by the learned counsel for the Defendant is the case reported in AIR 1972 Gujarat 208 (Shubhkaran Rameshwarlal Agarwal v. Durgaprasad Pvt.Ltd.). In this decision this Court has taken the view that entries in the books of accounts may be relevant whenever they refer to a matter into which the Court has to inquire, but such statements alone shall not be sufficient evidence to charge any person with liability. In other words, there should be additional independent evidence by which the factum of payment is to be proved and in that case the entries would be corroborative evidence. What should be the nature of additional evidence is always a question of fact depending on the circumstances of each case. Such evidence may consist of vouchers, receipts, bills or any other oral evidence of witness having personal knowledge of the affairs of the transaction. This is a decision which is essentially based on the aforesaid decision of the Supreme Court in the case of Chandradhar Goswami v. Gauhati Bank Ltd. (Supra). So far as the facts of the present case are concerned, no such independent evidence has been led in the form of any voucher, receipt or bill

and merely because the partner of the Plaintiff- firm Shri Naginbhai and his son had said that there were transactions subsequent to Bhadarva Vad I of S.Y.2027 it cannot be held that such transactions had taken place. In absence of any evidence of contemporaneous nature in the form of any voucher, receipt or bill by the Defendants, it is not possible to hold that the entries at Exhs.67 to 70 stands corroborated.

6. In view of the principles, as laid down by the Apex Court and followed by this Court, as above, and discussion as above with reference to S.34 of the Evidence Act, it is not possible to hold that the Plaintiff was able to prove the transactions beyond Bhadarva Vad I of S.Y.2027.

7. On this factual premises, if we examine the question of limitation, it is found that the Accounts were admittedly settled on Bhadarva Vad I of S.Y.2027 corresponding date according to Gregorian Calendar is 6.9.1971. The limitation, therefore, expired on 5.9.1974. The question, therefore, arises as to whether there was any acknowledgement by the Defendants during the period from 6.9.1971 to 5.9.1974. For the purpose of acknowledgement, reliance has been placed on acknowledgement by one Shri Lalbhai N.Mehta on behalf of the Defendants. While the Defendants have come with the case that Lalbhai Mehta was not their authorised agent, the letter itself has been produced on record at Exh.29 and it bears the date 8.12.1974. Therefore, even if this acknowledgement of the dues made by Shri Lalbhai Mehta is considered and even if it is assumed that Shri Lalbhai Mehta was authorised agent of Defendants, the date of acknowledgement is in December 1974 i.e. after 5.9.1974. The Plaintiff had thus failed to plead and prove any acknowledgment between 6.9.1971 and 5.9.1974 and, therefore, the acknowledgement Exh.29 dated 8.12.1974 is of no avail on the question of limitation. The Suit as was filed on 3.5.1975 was, therefore, clearly time barred and the trial court has rightly held that the Suit was barred by time. Consequently, the Suit has been rightly dismissed.

8. For the foregoing reasons, I do not find any merit in this Appeal. The Appeal is accordingly dismissed. In the facts and circumstances of the case, the parties are left to bear their own costs.

(M.R.Calla,J)